

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

DOVIE SEARS, ET AL.	)	
	)	
COMPLAINANTS	)	
	)	
VS.	)	CASE NO. 91-277
	)	
SALT RIVER WATER DISTRICT	)	
and	)	
KENTUCKY TURNPIKE WATER DISTRICT	)	
	)	
DEFENDANTS	)	

and

SALT RIVER WATER DISTRICT AND KENTUCKY	)	
TURNPIKE WATER DISTRICT JOINT PETITION	)	
FOR APPROVAL OF MERGER AGREEMENT AND	)	CASE NO. 92-169
RETAIL RATE ADJUSTMENT	)	

O R D E R

This matter arises upon the motion to dismiss the complaint in Commission Case No. 91-277 filed by Salt River Water District ("Salt River") and the motion to consolidate or, in the alternative, to intervene in Case No. 92-169 filed by the complainants, ratepayers of Salt River. Oral arguments on both motions were heard on June 9, 1992. The Commission herein denies the motion to consolidate the two cases, grants the motion of the Salt River ratepayers to intervene in the merger proceeding, and grants the motion to dismiss Case No. 91-277. The Commission further, on its own motion, broadens its investigation of the proposed merger to include an investigation of the rates of both

Salt River and Kentucky Turnpike Water District ("Kentucky Turnpike").

Salt River's motion to dismiss Case No. 91-277 is based upon the doctrine of res judicata. Salt River argues res judicata operates to bar relitigation of issues which have been litigated or should have been litigated in Salt River's prior rate case, Case No. 90-143.<sup>1</sup> Commission records reflect that proper public notice was given to the ratepayers of Salt River's requested increase in rates in Case No. 90-143. One ratepayer, Mary Chandler, who is also a complainant in Case No. 91-277, did request and was granted intervention in Salt River's last rate case and did participate in the public hearing. Complainants argue the record in the prior rate case "does not reflect any formal intervention . . . by the Attorney General of Kentucky or any separate representation of ratepayers," however, it is the opportunity to have intervened and participated which acts to preclude those issues from further litigation.

Kentucky courts have held that res judicata applies to quasi judicial acts of public commissions and administrative boards. Cardinal Bus Lines v. Consolidated Coach Corp., 254 Ky. 586, 72 S.W.2d 7 (1934). Application of the doctrine bars a subsequent action as to questions of fact and law actually litigated and those questions which should have been litigated as well.

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<sup>1</sup> Case No. 90-143, The Application of Salt River Water District of Bullitt County, Kentucky for Approval to Increase Its Rates.

However, the Supreme Court of Kentucky has recognized that the doctrine will not apply ". . . where significant change of conditions or circumstances occur between two successive administrative hearings." Bank of Shelbyville v. Peoples Bank of Bagdad, 551 S.W.2d 234, 236 (1977). Therefore, the doctrine will not preclude the ratepayers from intervention in the merger proceeding, Case No. 92-169, nor will it preclude them from demonstrating to the Commission any significant change of circumstances which have occurred since the hearing in Case No. 90-143 on February 12, 1991 which relate to the reasonableness of the current rates. The complaint as filed alleges that the current rates of Salt River are unreasonable due to managerial imprudence relating to construction of the "North and South Projects." Complainants further allege the debt service related to this project and included as a component of Salt River's rates has been unfairly allocated between Salt River and Kentucky Turnpike. To the extent that the reasonableness of the rates including the appropriateness of including this expense in Salt River's current rates was previously litigated in Case No. 90-143, the complaint is barred by res judicata.

Based upon the foregoing, the Commission finds the complaint case should be dismissed upon application of the doctrine of res judicata. The Commission further finds that the complainants should be granted full intervention in Case No. 92-169 to pursue those issues relevant to the merger proceeding including the reasonableness of Salt River's rates.

Inasmuch as we dismiss Case No. 91-277, the motion to consolidate is moot.

In the joint petition for approval of the merger, Petitioner Salt River has proposed a reduction in its rates for water service. The rates currently being charged by Kentucky Turnpike, however, are not currently contained in its approved tariff on file with this Commission. The joint petitioners request that the Commission approve the Salt River decrease and approve the rates for Kentucky Turnpike within the merger proceeding or, in the alternative, the unauthorized rates charged by Kentucky Turnpike be approved in a separate docket. The Commission finds that the reasonable rates to be charged by both districts should be determined during the proceeding to consider the appropriateness of merger.

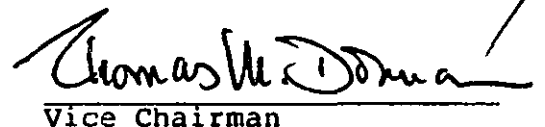
IT IS THEREFORE ORDERED that:

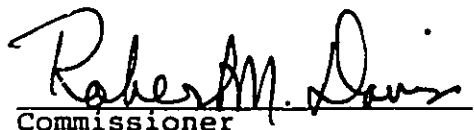
1. Salt River's motion to dismiss Case No. 91-277 be and it hereby is granted.
2. The Salt River ratepayers' motion to intervene in Case No. 92-169 be and it hereby is granted.
3. The procedural schedule attached hereto and incorporated herein shall be followed by all parties to this proceeding.

Done at Frankfort, Kentucky, this 30th day of June, 1992.

PUBLIC SERVICE COMMISSION

  
Chairman

  
Vice Chairman

  
Commissioner

ATTEST:

  
Executive Director, Acting

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC  
SERVICE COMMISSION IN CASE NO. 92-169 DATED 6/30/92

Prefiled testimony for Joint Petitioners due.....7/10/92

All requests for information to Joint Petitioners  
shall be due no later than.....7/22/92

Joint Petitioners shall mail or deliver responses to  
the original requests for information no later  
than.....7/31/92

All supplemental requests for information (to  
include only those matters within the scope of  
the initial requests) to Joint Petitioners shall be  
due no later than.....8/07/92

Joint Petitioners shall mail or deliver responses  
to supplemental requests for information no  
later than.....8/14/92

Intervenors testimony, if any, shall be filed  
in verified prepared form no later than.....8/21/92

All requests for information to Intervenors shall  
be due no later than.....8/28/92

Intervenors shall mail or deliver responses to requests  
for information no later than.....9/09/92

Witness list and exhibits for hearing to be  
prefiled.....9/14/92

All motions and objections to witness list and  
hearing exhibits due.....9/18/92

Public Hearings are to begin at 10:00 a.m., Eastern  
Daylight Time, in the Commission's offices at Frankfort,  
Kentucky, for the purpose of cross-examination of  
witnesses of Joint Petitioners and witnesses of the  
Intervenors.....9/23/92